

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DAVID JACKSON

PLAINTIFF

v.

CAUSE NO. 1:19CV332-LG-RPM

**COMMISSIONER PELICIA
T. HALL, ET AL.**

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

BEFORE THE COURT is the [61] Report and Recommendation entered by United States Magistrate Judge Robert P. Myers in which he recommends the [45] Motion for Judgment on the Pleadings filed by the Defendants, Joe Errington, Pelicia Hall, and Gloria Perry, be denied.¹ The Defendants did not file an objection. After a review of the record and the relevant law, the Court adopts the [61] Report and Recommendation in its entirety.

DISCUSSION

Plaintiff filed this lawsuit claiming that the Defendants² were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Plaintiff asserts that the Defendants failed to provide medical care for his degenerative joint disease. He also argues that he is not receiving care for Hepatitis

¹ On January 8, 2021, Magistrate Judge Myers submitted a [58] Report and Recommendation, to which the Defendants [59] objected. Judge Myers later [60] withdrew his recommendation.

² Also named in this lawsuit are Defendants Centurion of Mississippi and Ronald Woodall.

C, which he allegedly contracted while incarcerated. Plaintiff maintains that he is in “imminent danger” of serious bodily harm or death if he does not receive medical attention. Subsequently, on September 18, 2021, the Court granted Plaintiff’s motion to proceed *in forma pauperis*. (See Order, ECF No. 7).

On March 3, 2020, an Omnibus hearing was held.³ On April 1, 2020, the Defendants, Joe Errington, Pelicia Hall, and Gloria Perry, filed a [45] Motion for Judgment on the Pleadings, arguing that the Plaintiff’s *in forma pauperis* status should be revoked under 28 U.S.C. § 1915(g). Mainly, they argue that Plaintiff admitted that he had three strikes in the Complaint, and that there has been no showing of “imminent danger” to warrant *in forma pauperis* status.⁴ For these reasons, according to Defendants, Plaintiff’s *in forma pauperis* status should be revoked and the Complaint be dismissed. The Plaintiff opposes Defendants’ Motion.

Subsequently, on February 3, 2021, Magistrate Judge Myers submitted the instant [61] Report and Recommendation, finding that the Defendants’ Motion under Fed. R. Civ. P. 12(c) is improper. Judge Myers declined to construe the Motion as a motion to revoke *in forma pauperis* status under 28 U.S.C. § 1915(g). Specifically, Judge Myers found that dismissal of the Complaint under Fed. R. Civ.

³ The hearing operated as a *Spears* hearing. *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

⁴ Plaintiff has filed multiple lawsuits over the past twenty years. *Jackson v. Booker*, 00-60115, 2000 U.S. App. LEXIS 39686 (5th Cir. Aug. 22, 2000); *Jackson v. Hood*, 1:13-cv-1194 (D.D.C. Aug. 2, 2001); *Jackson v. Moskowitz*, 1:03-cv-1173 (D.D.C. Sept. 13, 2004); *Jackson v. Sparkman*, 4:01-cv-273, 2002 U.S. Dist. LEXIS 29465 (N.D. Miss. Apr. 12, 2002); *Jackson v. Sparkman*, 4:01-cv-307 (N.D. Miss. Feb. 22, 2002); *Jackson v. Durfey*, 3:97-cv-48 (S.D. Miss. Mar. 10, 1997).

P. 12(c), on § 1915(g) grounds, would deny Plaintiff the opportunity to pay the full filing fees and proceed with the action, if he so wishes, thus making dismissal plainly prejudicial. (*See* Report and Recommendation, at 5, ECF No. 61). Judge Myers also found that it would be prejudicial to construe Defendants' Motion as a motion to revoke because Defendants' failure to correctly label their Motion could result in some prejudice to the *pro se* Plaintiff by creating confusion on how to reply. *Id.* at 7. Defendants did not file an objection.

Where no objection has been filed, the Court need only review the Report and Recommendation to determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having conducted the required review, the Court finds Magistrate Judge Myers' findings and conclusions neither clearly erroneous nor contrary to law. Fed. R. Civ. P. 12(c) is the improper vehicle to revoke Plaintiff's *pauper* status, and to dismiss the Complaint under Rule 12(c) would be plainly prejudicial. Thus, the Court will adopt Judge Myers' recommendation that the Defendants' Motion should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the [61] Report and Recommendation entered by United States Magistrate Judge Robert P. Myers is **ADOPTED** as the opinion of this Court. Defendants' [45] Motion for Judgment on the Pleadings is hereby **DENIED**.

SO ORDERED AND ADJUDGED this the 9th day of March, 2021.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE